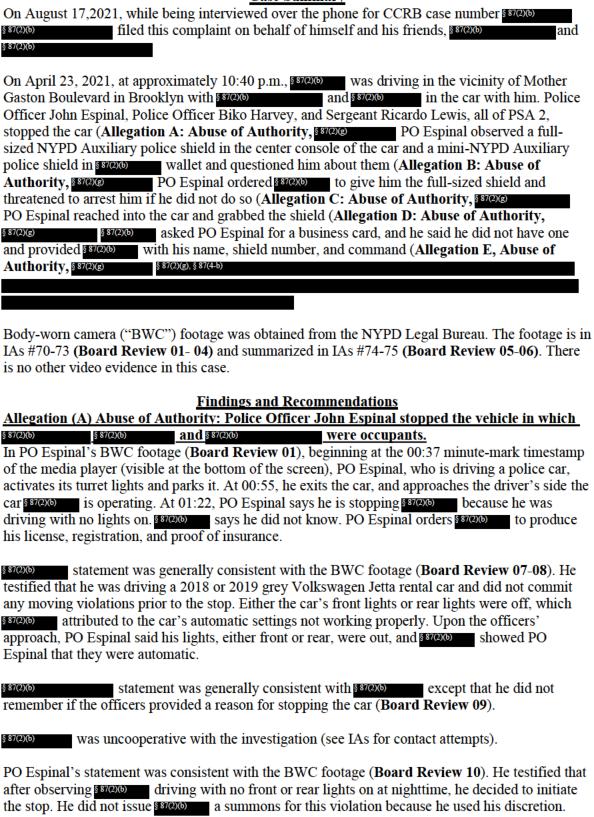
CCRB INVESTIGATIVE RECOMMENDATION

Investigator:		Team:	CCRB Case #:		Force		Discourt.	U.S.
Ariana Thomas		Squad #13	202104899	☑	Abuse		O.L.	☐ Injury
Incident Date(s)		Location of Incident:			18 Mo. SOL		Precinct:	
Friday, 04/23/2021 10:40 PM		Mother Gaston Boulev	vard	10/23/2022				
Date/Time CV Reported		CV Reported At:	How CV Reported	d: Date/Time Received at CCRB		RB		
Tue, 08/17/2021 12:09 PM		CCRB	Phone	Tue, 08/17/2021 12:09 PM		Л		
Complainant/Victim	Туре	Home Addre	ess					
Subject Officer(s)	Shield	TaxID	Command					
1. POM John Espinal	19909	962383	PSA 2					
Witness Officer(s)	Shield N		Cmd Name					
SSA Ricardo Lewis	02411	936948	PSA 2					
2. POM Biko Harvey	07331	960639	PSA 2					
Officer(s)	Allegation	on			Inv	vestiga	ntor Reco	mmendation
A.POM John Espinal	Abuse: Police Officer John Espinal stopped the vehicle in which \$87(2)(b) and \$87(2)(b							
B.POM John Espinal	Abuse: Police Officer John Espinal questioned § 87(2)(b)							
C.POM John Espinal	Abuse: Police Officer John Espinal threatened to arrest							
D.POM John Espinal	Abuse: Police Officer John Espinal searched the vehicle in which \$87(2)(6) and \$87(2)(6) were occupants.							
E.POM John Espinal	Abuse: Police Officer John Espinal failed to provide with a business card.							
§ 87(2)(g), § 87(4-b)								

Case Summary



An automobile stop is lawful when an officer has probable cause to believe that an individual has

violated the Vehicle and Traffic Law (<u>People v. Robinson</u>, 97 N.Y. 2d 34 (2001)) (**Board Review 11**). New York Vehicle and Traffic Law, 375, §A, requires that every motor vehicle, driven upon a highway during the period from one-half hour after sunset to one-half hour before sunrise, display at least two lighted head lamps on the front, one on each side, having light sources of equal power, and if manufactured on or after January 1, 1952, at least two lighted lamps on the rear, one on each side, which shall display a red light visible from the rear for a distance of at least one thousand feet (**Board Review 12**).

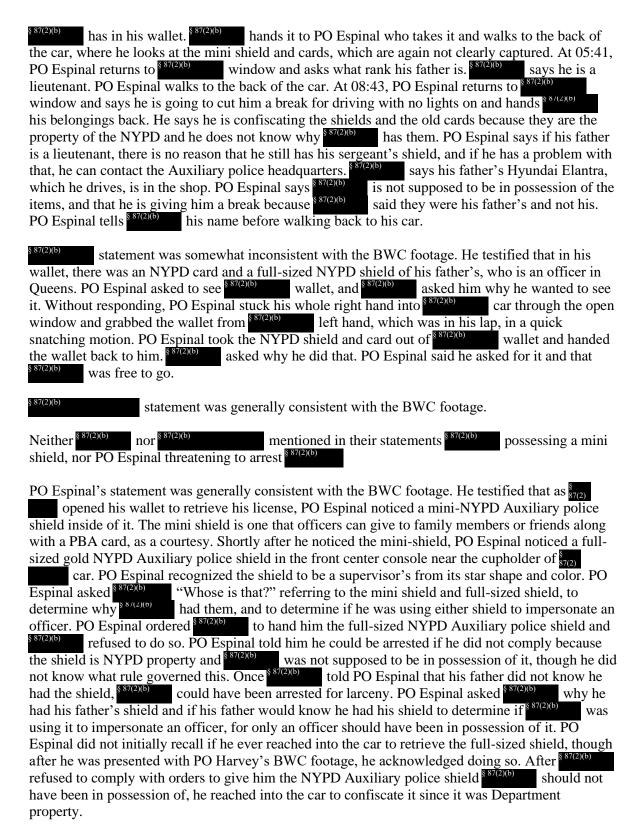
This incident occurred at approximately 10:40 p.m., well over one-half hour after sunset, and acknowledged that his lights were off while he was driving, which is consistent with PO Espinal's testimony of his observations prior to initiating the stop. [887@]

Allegation (B) Abuse of Authority: Police Officer John Espinal questioned STONO Allegation (C) Abuse of Authority: Police Officer John Espinal threatened to arrest STONO

Allegation (D) Abuse of Authority: Police Officer John Espinal searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants. In PO Espinal's BWC footage (Board Review 01), beginning at the 01:38 minute mark of the media player timestamp (visible at the bottom of the screen), PO Espinal asks [87(2)6) mini shield is that?" (in \$\$70)6 wallet, which is on his lap, there is a mini police shield). says it is his father's. PO Espinal says, "You got a PBA card to go with that?" says, "Not exactly a PBA card. He gave me this," and hands a card, which is not clearly captured, to PO Espinal. At 02:14, PO Espinal points towards the car and asks (What's that you got there, that shied?" \$87(2)(6) says he switched cars. PO Espinal tells \$87(2)(6) "Turn it over. What is it?" [870] reaches forward towards his center console, picks up a police shield, and shows it to PO Espinal. At 02:36, PO Espinal asks, "Whose shield is that?" says it is his father's shield. At 02:44, PO Espinal asks \$87000 if he can see the shield. \$87000 says no and that he does not feel comfortable. PO Espinal says it is property of the NYPD and asks to see it again, this time in a raised voice. \$87(2)(b) asks why. At 02:56, PO Espinal says, "You can give it to me, or I can handcuff you right now for being in possession of that." says, "It's my father's." PO Espinal asks to see it again. says he does not want PO Espinal to take it. At 03:05, PO Espinal says, "My man," as his camera pans towards the ground.

This next aspect of the incident is more clearly captured in PO Harvey's BWC footage (**Board Review 03**), where at the 01:07, minute mark of the media player timestamp (visible at the bottom of the screen), though PO Harvey's camera is angled down (as he types into his phone), in the top left corner of the frame, PO Espinal is captured reaching his right hand through the open driver's window and grabs the shield out of hand.

The remainder of the footage is more clearly captured in PO Espinal's BWC footage (**Board Review 01**), where at 03:15, PO Espinal twice asks, "Why do you have your father's shield?" says, "He had put it in my old bookbag and I had switched cars." PO Espinal interjects and says, "So he gives you his shield?" says, "No, he didn't give me his shield. I had it in my..." PO Espinal interjects and asks for father's name and command. says his name is says and that he works at the 105th Precinct. PO Espinal says, "If I call him right now... and I verify his status that he is still an Auxiliary police officer... Why do you have his shield?" says he does not take his shield. PO Espinal says, "If I call him and verify, he is going to tell me the same?" At 04:00, says, "No, he doesn't know I have his shield. I'm pretty sure he doesn't know I have his shield." At 04:35, PO Espinal asks to see the mini shield that



The common-law right of inquiry is a level of contact between officers and civilians which is activated by founded suspicion that criminality is afoot and permits a greater intrusion than a mere request for information. Officers may ask pointed questions which would lead the person to

reasonably believe that he or she is suspected of wrongdoing. New York v. Hollman, 79 N.Y. 2d 181 (1992) (Board Review 24).

NYPD Auxiliary Police Guide, Procedure 504-08 (Board Review 22), states that Auxiliary members are to adhere to all regulations listed within Department Property Agreement. The agreement is signed upon issuance of any shield by the Auxiliary Police Section ("APS"). The APS, Department Property Agreement (Board Review 23) states that Auxiliary shields are the property of the New York City Police Department, and are only to be used for identification purposes and do not grant any immunity or privilege.

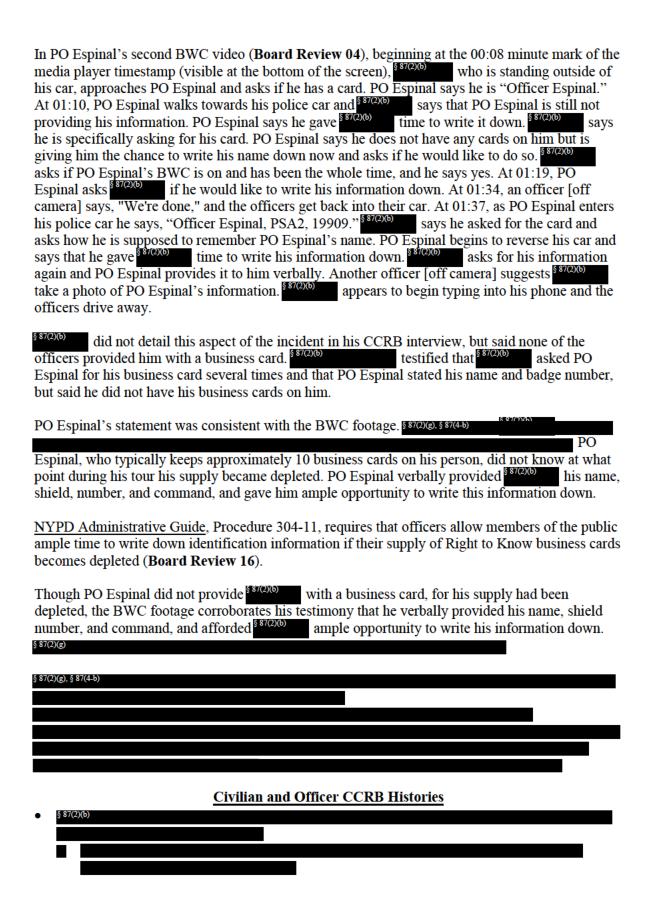
New York Penal Law, Section 190.25 (**Board Review 14**), states that a person is guilty of criminal impersonation in the second degree (a class A misdemeanor) when he pretends to be a public servant, or wears or displays without any authority any uniform, badge, insignia or facsimile thereof by which such public servant is lawfully distinguished, or falsely expresses by his words or actions that he is a public servant or is acting with approval or authority of a public agency or department; and so acts with the intent to induce another to submit to such pretended official authority.

NYPD Patrol Guide, Procedure 212-81 (**Board Review 13**), states that upon observing the unauthorized display of a badge, and person displaying purports to be a public servant, officers can arrest the civilian for criminal impersonation in the second degree, New York State Penal Law, Section 190.25, and seize the badge as evidence.

The "automobile exception" to the warrant requirement of the Fourth Amendment permits a warrantless search of a vehicle if there is probable cause to believe that the vehicle contains evidence or contraband. People v. Galak, 81 N.Y. 2d 463 (1993) (Board Review 15).

Allegation (E) Abuse of Authority: Police Officer John Espinal failed to provide

with a business card.



§ \$7(2)(b)			
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• This is the first (Board Review	complaint to which save (18, 25).	and § \$7(2)(6) ha	ve been a party
		ice for five years and has been a su which were substantiated.	ıbject in six CCRB
• As of June 30, 2	was not suitable for me 2022, the New York Cit ed in regards to this inci	Civil, and Criminal Histories diation. y Office of the Comptroller has no dent (Board Review 26).	record of a Notice of
Squad: 13			
Investigator:	Signature	Inv. Ariana Thomas Print Title & Name	07/12/2022 Date
Squad Leader:	Signature	IM Laura Kastner Print Title & Name	07/12/2022 Date
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